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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,926	01/14/2002	Ralph Graham	Graham/Bathtub Protection	2626
7590	12/22/2004		EXAMINER	
DAVID G. HENRY			CHIN SHUE, ALVIN C	
7th Floor			ART UNIT	PAPER NUMBER
900 Washington Avenue				
P.O. Box 1470			3634	
Waco, TX 77603-1470			DATE MAILED: 12/22/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/047,926	GRAHAM, RALPH
	Examiner	Art Unit
	Alvin C. Chin-Shue	3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 September 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gould in view of Miller. Gould shows the claimed system with the exception of the claimed plurality of positioning units. Miller in fig. 2 shows a plurality of positioning units with threaded rods 40,42, each respectively threadingly engaging a respective depending bracket 32,34. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Gould for each of his depending bracket 5 to comprise a respective threaded aperture, in lieu of opening 5', and threadingly engaged rods, as taught by Miller, in lieu of his rod portions 6, to enable a positive threaded engagement with his brackets 5 and to further enable individual adjustment of each rods.

Claim 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayer in view of Miller. Mayer shows the claimed system with the exception of the attached brackets with the threadingly engaged rod. Miller shows an adjustable foot rod 40 threadingly engaging a depending bracket 32. It would have been obvious to one of ordinary skill in the art at the time the invention was made to

modify Mayer for each of his depending bracket 13 to comprise a threadingly engaged adjustable foot member, as taught by Miller, to enable positive clamping. Furthermore, the examiner takes official notice that the practice of using conventional releasable fasteners, e.g. bolts, screws, etc. to enable releasable attachment of brackets is a conventional practice, and to attach the brackets 13 by any conventional removable fasteners, e.g. bolts, screws, in lieu of his rivets, would have been an obvious engineering expedient in view of the conventional practice.

Applicant's arguments filed 9.20.04 have been fully considered but they are not persuasive. Applicant argues that Miller is not an analogous art. The examiner disagrees, as the difference to be resolved between either Gould or Mayer and the claimed invention is the threaded adjustable foot member. Miller teaches a foot member having a threaded rod threadingly engaging a bracket for applicant's disclosed purpose of enabling adjustable clamping by the foot member. Miller is thus an analogous art. Applicant further argues that Miller is concerned with manhole casting. It is noted that the teaching appreciated by one of ordinary skill in the art is that of the adjustable foot member and not Miller as a whole.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin C. Chin-Shue whose telephone number is 703-308-2475. The examiner can normally be reached on Monday-Friday, 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alvin C. Chin-Shue
Examiner
Art Unit 3634

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